

## HOUSE BILL NO. 678

INTRODUCED BY POMNICHOWSKI, MILBURN

BY REQUEST OF THE HOUSE NATURAL RESOURCES STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO OPENCUT MINING; ESTABLISHING AN OPENCUT FUND AND ANNUAL FEE; EXEMPTING CERTAIN OPENCUT OPERATIONS FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX; REVISING THE OPENCUT PERMITTING PROCESS; AMENDING SECTIONS 15-38-104, 15-38-106, 15-38-113, 82-4-405, 82-4-424, 82-4-432, AND 82-4-437, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Opencut fund -- use of fund.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the opencut fund.

(2) There must be deposited in the account 85% of the money received from the fee established in 82-4-437.

(3) Money in the fund must be spent for the purposes of administering and enforcing this part.

**Section 2.** Section 15-38-104, MCA, is amended to read:

**"15-38-104. Tax on mineral production.** (1) Except as provided in 15-38-113 and subsections (2) through (5) of this section, the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is \$25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of \$5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is \$25 plus an additional amount computed on the gross value of product for talc derived from

1 the business work or operation within this state during the calendar year immediately preceding at the rate of 4%  
2 of the gross value of product in excess of \$625; and

3 (b) coal is \$25 plus an additional amount computed on the gross value of product for coal produced in  
4 Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of product in  
5 excess of \$6,250.

6 (3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
7 or producing vermiculite is \$25 plus an additional amount computed on the gross value of product for vermiculite  
8 derived from the business work or operation within this state during the calendar year immediately preceding at  
9 the rate of 2% of the gross value of product in excess of \$1,250.

10 (4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
11 or producing limestone for the production of quicklime is \$25 plus an additional amount computed on the gross  
12 value of product for limestone derived from the business work or operation within this state during the calendar  
13 year immediately preceding at the rate of 10% of the gross value of product in excess of \$250.

14 (5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting,  
15 or producing industrial garnets and associated byproducts is \$25 plus an additional amount computed on the  
16 gross value of product for industrial garnets and associated byproducts derived from the business work or  
17 operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value  
18 of product in excess of \$2,500."

19  
20 **Section 3.** Section 15-38-106, MCA, is amended to read:

21 **"15-38-106. Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by this  
22 chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement  
23 established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is  
24 paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar  
25 year is filed with the department.

26 (2) The department shall, in accordance with the provisions of 17-2-124, deposit the proceeds from the  
27 resource indemnity and ground water assessment tax and money deposited pursuant to 82-4-424(3) in the  
28 following order:

29 (a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund  
30 provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after

crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds from the tax in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

(d) 50% of the remaining proceeds from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621; and

(e) all remaining proceeds from the tax in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

**Section 4.** Section 15-38-113, MCA, is amended to read:

**"15-38-113. Exemption from resource indemnity and ground water assessment tax.** The following persons are exempt from the resource indemnity and ground water assessment tax:

(1) ~~A~~ a person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, ~~is exempt from the resource indemnity and ground water assessment tax.~~

(2) ~~A~~ a person who has paid the tax on oil and natural gas production under the provisions of Title 15, chapter 36, part 3, ~~is exempt from the resource indemnity and ground water assessment tax;~~ or

(3) a person who holds a permit pursuant to Title 82, chapter 4, part 4, except for a person who mines,

1 extracts, or produces bentonite."

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3 **Section 5.** Section 82-4-405, MCA, is amended to read:

4 **"82-4-405. Inapplicability to government.** The provisions of this part relating to ~~fees or~~ bonds do not  
5 apply to the federal government or its agencies, the state of Montana, counties, cities, or towns."  
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7 **Section 6.** Section 82-4-424, MCA, is amended to read:

8 **"82-4-424. Receipt and expenditure of funds -- disposition of penalties and other money.** (1) The  
9 department may receive any federal funds, state funds, or any other funds for the reclamation of affected land.  
10 The department may cause the reclamation work to be done by its employees, by employees of other  
11 governmental agencies, by soil conservation districts, or through contracts with qualified persons.

12 (2) All penalties and other money paid under the provisions of this part, except annual fees, must be  
13 deposited in the environmental rehabilitation and response account in the state special revenue fund provided  
14 for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed  
15 for reclamation and for which the department is not able to locate a surety or other person who owns the funds  
16 after diligent search must be deposited in the environmental rehabilitation and response account in the state  
17 special revenue fund.

18 (3) The department shall deposit 85% of proceeds from annual fees into the opencut fund established  
19 in [section 1] and transfer 15% of the proceeds from the fees to the department of revenue for distribution in  
20 accordance with 15-38-106."  
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22 **Section 7.** Section 82-4-432, MCA, is amended to read:

23 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) An application for a  
24 permit must be made using forms furnished by the department and must contain the following:

25 (a) the name of the applicant and, if other than the owner of the land, the name and address of the  
26 owner;

27 (b) the type of operation to be conducted;

28 (c) the estimated volume of overburden and materials to be removed;

29 (d) the location of the proposed opencut operation by legal description and county;

30 (e) the date when the opencut operation is proposed to commence; and

(f) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;

(c) a plan of operation that ~~meets~~ addresses the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434; and

(d) written documentation that the landowner has been consulted about the proposed plan of operation; and

(e) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the records of the county clerk and recorder in the county where the proposed opencut operation is located.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) (a) (i) ~~Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within 30 to 5 working days, review the application, inspect the proposed site, and notify the person as to whether or not the department believes that the application is acceptable complete. An application is acceptable complete if it complies with all requirements of contains the items listed in subsections (1) and (2). If the department determines that the application is not acceptable complete, the department shall include in the notification~~ notify the applicant in writing and include a detailed identification of all deficiencies INFORMATION NECESSARY TO MAKE THE APPLICATION COMPLETE.

~~(b) Within 30 days of receipt of the applicant's responses to the identified deficiencies, the department shall notify the applicant if the application is acceptable or not. If the application is unacceptable, the notice must include a detailed explanation of the remaining deficiencies.~~

(ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until the department determines that the application is complete.

1 (b) (i) A determination that an application is complete does not ensure that the application is acceptable  
2 and does not limit the department's ability to request additional information or inspect the site during the review  
3 process.

4 (ii) Upon determining that an application is complete, the department shall begin reviewing the application  
5 for acceptability pursuant to this section.

6 (iii) The department shall accept public comment throughout the review process.

7 (c) The department may declare an application abandoned and void if:

8 (i) the applicant fails to respond to the department's written request for more information regarding the  
9 deficiencies within 1 year; and

10 (ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to  
11 provide information regarding the deficiencies within 30 days.

12 (d) The department shall notify the applicant when an application is complete and post the complete  
13 application on the department's website.

14 (5) Within 15 days after the department sends notice of a complete application to the applicant, the  
15 applicant shall provide public notice, which must include:

16 (a) the name, address, and telephone number of the applicant;

17 (b) a description of the acreage, the estimated volume of overburden and materials to be removed, the  
18 type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed  
19 opencut operation;

20 (c) a legal description of the proposed opencut operation and a map showing the location of the  
21 proposed opencut operation and immediately surrounding property; and

22 (d) on a form provided by the department, information on how to request a public meeting pursuant to  
23 this section.

24 (6) To provide public notice, the applicant shall:

25 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed  
26 opencut operation;

27 (b) mail the notice by first-class mail to the board of county commissioners of the county in which the  
28 proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary  
29 of the proposed opencut permit area using the most current known owners of record as shown in the records of  
30 the county clerk and recorder in the county where the proposed opencut operation is located;

1 (c) post the notice in at least two prominent locations at the site of the proposed opencut operation,  
2 including near a public road if possible; and

3 (d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

4 (7) ~~The~~ (A) EXCEPT AS PROVIDED IN SUBSECTION (7)(B), THE department shall accept requests for a public  
5 meeting for 45 days after the department sends notice to the applicant of a complete application. ~~WITHIN THIS~~  
6 PERIOD, THE DEPARTMENT MAY HOLD A PUBLIC MEETING AT ITS DISCRETION. AT THE END OF THIS PERIOD, UNLESS A  
7 PUBLIC MEETING IS REQUIRED PURSUANT TO SUBSECTION (9), THE DEPARTMENT SHALL NOTIFY THE APPLICANT AS TO  
8 WHETHER OR NOT THE APPLICATION IS ACCEPTABLE PURSUANT TO SUBSECTION (10) ~~OR THAT THE APPLICATION REQUIRES~~  
9 ~~AN EXTENDED REVIEW PURSUANT TO [SECTION 8].~~

10 (B) IF THE APPLICANT AND THE DEPARTMENT MUTUALLY AGREE OR THE APPLICANT SUBMITS DOCUMENTATION  
11 TO THE DEPARTMENT SHOWING THAT A PUBLIC MEETING WILL NOT BE REQUIRED PURSUANT TO SUBSECTION (9), THE  
12 DEPARTMENT SHALL INFORM THE APPLICANT WITHIN 30 DAYS OF THE NOTICE OF A COMPLETE APPLICATION AS TO  
13 WHETHER OR NOT THE APPLICATION IS ACCEPTABLE PURSUANT TO SUBSECTION (10).

14 (8) ~~Within~~ IF A PUBLIC MEETING IS REQUIRED PURSUANT TO SUBSECTION (9), WITHIN 30 days from the closing  
15 date of the public meeting request period in subsection (7), the department shall:

16 (a) hold a meeting, ~~if necessary, pursuant to subsection (9); and~~

17 (b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or  
18 that the application requires an extended review pursuant to [section 8].

19 (9) (a) ~~The department may hold a public meeting in the area of the proposed opencut operation at its~~  
20 ~~discretion.~~ The department shall hold a public meeting in the area of the proposed opencut operation at the  
21 request of:

22 (i) the applicant; or

23 (ii) at least 30% of the property owners OR 10 PROPERTY OWNERS, WHICHEVER IS GREATER, notified pursuant  
24 to this section.

25 (b) ~~If a public meeting will be held,~~ TO PROVIDE NOTICE FOR A PUBLIC MEETING, the department shall notify  
26 by first-class mail the property owners on the list provided by the applicant pursuant to this section and the board  
27 of county commissioners in the county where the proposed opencut operation is located.

28 (10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and  
29 includes a plan of operation that satisfies the requirements of 82-4-434 and rules adopted pursuant to this part  
30 related to 82-4-434. If the department determines that the application is not acceptable, the department shall

1 notify the applicant in writing and include a detailed identification of all deficiencies.

2 (b) Within ~~30~~ 10 WORKING days of receipt of the applicant's response to the identified deficiencies, the  
 3 department shall review the responses and notify the applicant as to whether or not the application is acceptable.

4 If the application is unacceptable, the department shall notify the applicant in writing and include a detailed  
 5 identification of the deficiencies.

6 ~~(c) The department may for sufficient cause extend either or both of the 30-day review periods for an~~  
 7 ~~additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day~~  
 8 ~~period. The department shall include in the notification of extension the reason for the extension.~~

9 ~~(d)(c)~~ If the application is acceptable, the department shall issue a permit to the operator that entitles the  
 10 operator to engage in the opencut operation on the land described in the application.

11 ~~(5)(11)~~ (a) An operator may amend a permit by submitting an amendment application to the department.  
 12 Upon receipt of the amendment application, the department shall review it in accordance with the requirements  
 13 and procedures in ~~subsection (4)~~ this section. If the amendment application is acceptable, the department shall  
 14 issue an amendment to the original permit.

15 (b) An application for an amendment is not subject to the public notice or public meeting requirements  
 16 of this section or an extended review pursuant to [section 8] unless it proposes:

17 ~~—— (i) an increase in permitted acreage of 50% or more of the amount of permitted acreage in the original~~  
 18 ~~permit; or~~

19 ~~—— (ii) the addition of a concrete or asphalt plant.~~

20 (C) FOR AMENDMENT APPLICATIONS NOT SUBJECT TO THE PUBLIC NOTICE AND PUBLIC MEETING REQUIREMENTS  
 21 OF THIS SECTION, THE DEPARTMENT SHALL, WITHIN 45 DAYS OF NOTIFYING THE APPLICANT THAT THE APPLICATION IS  
 22 COMPLETE, NOTIFY THE APPLICANT AS TO WHETHER OR NOT THE APPLICATION IS ACCEPTABLE PURSUANT TO SUBSECTION  
 23 (10) OR THAT THE APPLICATION REQUIRES AN EXTENDED REVIEW PURSUANT TO [SECTION 8].

24 (12) The department shall publish a copy of an acceptable permit or amendment on its website."  
 25

26 NEW SECTION. Section 8. Extended review -- criteria -- timeframes. (1) The department may  
 27 subject an opencut application to an extended review if:

28 ~~—— (a) the department determines that substantial issues are not adequately satisfied in the proposed plan~~  
 29 ~~of operation; or~~

30 ~~—— (b) the department determines that comments received at a public meeting held pursuant to 82-4-432~~



1 reveal substantial issues not adequately satisfied in the proposed plan of operation.

2 (2) (a) For a complete application subject to an extended review, the department shall, within 60 days  
3 from the date the department determines the application warrants an extended review, inspect the proposed site  
4 if the department determines an inspection is necessary and notify the applicant as to whether or not the  
5 application is acceptable pursuant to 82-4-432. If the application is unacceptable, the notice must include a  
6 detailed explanation of the deficiencies.

7 (b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall  
8 review the responses and notify the applicant as to whether or not the application is acceptable. If the application  
9 is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the  
10 deficiencies.

11 (c) The department may for sufficient cause extend either or both of the review periods in subsection  
12 (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective  
13 original period. The department shall include in the notification of extension the reason for the extension.

14 (d) If the application is acceptable, the department shall issue a permit or a permit amendment to the  
15 operator that entitles the operator to engage in the opencut operation on the land described in the application.  
16

17 **Section 9.** Section 82-4-437, MCA, is amended to read:

18 **"82-4-437. Annual report -- fee.** (1) For each permitted operation, the operator shall file an annual  
19 report on a form furnished by the department. The report must contain the information and be submitted at times  
20 provided in rules of the board.

21 (2) (a) Except as provided in subsection (2)(b), each permitted operation shall submit with the annual  
22 report a fee of 2.5 cents per cubic yard of material mined during the period covered by the report.

23 (b) Permitted operations that mine, extract, or produce bentonite are not subject to the fee in this section."  
24

25 NEW SECTION. Section 10. Codification instruction. [Sections 1 and 8] are intended to be codified  
26 as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections  
27 1 and 8].

28  
29 COORDINATION SECTION. SECTION 11. COORDINATION INSTRUCTION. IF SENATE BILL NO. 370 AND [THIS  
30 ACT] ARE BOTH PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 15-38-113, THEN THE SECTION

1 AMENDING 15-38-113 IN [THIS ACT] IS VOID.

2  
3 COORDINATION SECTION. SECTION 12. COORDINATION INSTRUCTION. IF SENATE BILL NO. 370 AND [THIS  
4 ACT] ARE BOTH PASSED AND APPROVED AND BOTH CONTAIN A SECTION THAT AMENDS 82-4-405, THEN THE SECTION  
5 AMENDING 82-4-405 IN SENATE BILL NO. 370 IS VOID.

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7 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

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9 NEW SECTION. Section 14. Applicability -- retroactive applicability. (1) [Sections 1 through 6 and  
10 9] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2007.

11 (2) Except as provided in subsection (3), [sections 7 and 8] apply to permit applications and amendment  
12 applications pursuant to 82-4-432 submitted after [the effective date of this act].

13 (3) [Section 7(4)(c)] applies retroactively, within the meaning of 1-2-109, to permit applications and  
14 amendment applications submitted prior to [the effective date of this act].

15 - END -